Supreme Court, U.S.
FILED
98 27 JUN 29 1998
OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1998

ALEX BLANKENSHIP, PETITIONER,

v.

PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT

On Petition for a Writ of Certiorari to the
Illinois Appellate Court, First District

PETITION FOR A WRIT OF CERTIORARI

JAMES W. REILLEY**
TERRY SULLIVAN
The Sullivan Firm, ltd.
2550 West Golf Road
Suite 101
Rolling Meadows, Illinois 60008
(847) 228-1100

JAMES W. REILLEY
2015 South Arlington Heights Road
Arlington Heights, Illinois 60005
(847) 228-9870

Counsel for Petitioner
**Counsel of Record

29 pp

QUESTION PRESENTED

Whether the Petitioner was denied due process of law when the trial and appellate courts refused to enforce a cooperation agreement entered into by the Petitioner and the State of Illinois when the Petitioner performed his obligations under the agreement and detrimentally relied on the agreement.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties to the proceeding.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

JURISDICTION 1

STATUTORY PROVISION INVOLVED 1

STATEMENT OF CASE 2

REASON FOR GRANTING THE PETITION 4

I. DUE PROCESS REQUIRES THAT GOVERNMENT TO ADHERE TO THE TERMS OF ANY IMMUNITY AGREEMENT IT ENTERS INTO WITH A DEFENDANT 4

II. THE DECISION BELOW HAS IMPORTANT AND DISRUPTIVE CONSEQUENCES FOR BOTH THE ACCUSED AND LAW ENFORCEMENT 5

III. THE APPELLATE COURT'S HOLDING CONFLICTS WITH DECISIONS OF OTHER FEDERAL COURTS 6

CONCLUSION 7

APPENDIX A 1a

APPENDIX B 1b

TABLE OF AUTHORITIES

Cases:

People v. Schmidt, 173 Ill. App. 3d 66, 527 N.E.2d 384, 405 (1988)...5

People v. Smith, 233 Ill. App. 3d 342, 599 N.E.2d 492, 497 (1992) 5

State v. Howe, 514 N.W. 2d 356. 363 (C.App. Neb. 1994) 4

U.S. v. Carillo, 709 F.2d 35, 37 (9th Cir. 1983).....4

U.S. v. Carpenter, 611 F. Supp. 768, 774-75 (N.D. Ga. 1985).....6

U.S. v. Johnson, 861 F.2d 510 (8th Cir. 1988).....4,6

U.S. v. Pascal, 496 F. Supp. 313 (N.D. Ill. 1979).....6

U.S. v. Plescia, 48 F.3d 1452 (1995).....3

U.S. v. Thompson, 25 F. 3d 1558, 1562 (11th Cir. 1994) 4

U.S. Constitution:

Amendment V 1

Amendment XIV 1

Statutes, Regulations, and Rule:

28 U.S.C. § 1257 (a).....1

No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1998

ALEX BLANKENSHIP, PETITIONER,

v.

PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT

On Petition for a Writ of Certiorari to the
Illinois Appellate Court, First District

PETITION FOR A WRIT OF CERTIORARI

JURISDICTION

The judgment of the Appellate Court of Illinois was entered on August 18, 1997 (Appendix A). On April 1, 1998, the Illinois Supreme Court denied a Petition for Leave to Appeal. (Appendix B) The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (a).

STATUTORY PROVISION INVOLVED

U.S. Constitution Amendment V "No person shall...be deprived of life, liberty, or property, without due process of law..."

U.S. Constitution Amendment XIV "...nor shall any state deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

On November 30, 1989, the Petitioner was sentenced to six years in the Department of Corrections for possession of a controlled substance with intent to deliver. On June 7, 1993, the Petitioner filed a Petition for Post Conviction Relief in which he alleged that the State of Illinois failed to honor a cooperation agreement entered into with law enforcement officers of the State of Illinois.

At the hearing, a former suburban police officer who had been assigned to the Cook County State's Attorney's narcotics unit testified to the existence of a cooperation agreement. Petitioner commenced performance and attempted to arrange a direct sale to the officer with a major drug trafficker. In the course of his cooperation, the Petitioner confessed that he was still involved in drug trafficking for this individual because he owed him money and feared for the safety of his family.

Prior to consummation of the transaction, apparent intergovernmental jealousies resulted in instructions to the officer "to keep his hands off" Petitioner and for Petitioner to work with the Chicago Police Department. Despite his concerns for his safety in view of the involvement of a Chicago Police Officer in the drug organization, the Petitioner persisted in his efforts to arrange the transaction for the Police Department. The transaction never occurred because the Department was unable or unwilling to advance the funds necessary to consummate the transaction.

In February of 1989, the Chicago Police Department and the State's Attorney's Office refused to work further with the Petitioner. Petitioner took his information and his efforts to the federal government, and within the next two months the Petitioner delivered to the federal government what he had promised the State - a major drug conspiracy. The result of his cooperation was the

arrest and conviction in federal court of eight individuals involved in what the Seventh Circuit characterized as a "sizeable Chicago - based cocaine conspiracy spanning several years." (U.S. v. Plescia, 48 F.3d 1452 (1995)).

The State conceded the existence of the agreement but contended that the ultimate result of the cooperation was prosecuted by the federal government, not state authorities. The trial court agreed and denied the petition finding that there was no agreement with the State of Illinois at the time Petitioner went to trial. (Appendix 12a).

The Appellate Court, with one justice dissenting, affirmed, finding that the state was free to withdraw from the original agreement prior to performance. Justice Buckley, in his dissent, pointed out that there was no dispute that a cooperation agreement existed and that Petitioner honored his promise under the agreement despite the tremendous danger and the State's unwillingness to help him as promised.

Justice Buckley found that it was a violation of defendant's rights to due process of law for the State to renege on its promises under a cooperation agreement after the defendant has performed. He characterized the State's actions "not only manipulative and petty, but also blatantly violative of defendant's right to due process under the cooperation agreement and contrary to public policy." (Appendix 16a).

REASONS FOR GRANTING THE PETITION

I. DUE PROCESS REQUIRES THE GOVERNMENT TO ADHERE TO THE TERMS OF ANY IMMUNITY AGREEMENT IT ENTERS INTO WITH A DEFENDANT.

Parties to a cooperation agreement agree that a defendant's cooperation is sufficient consideration for the government's promise of immunity. Cooperation agreements are contractual in nature and subject to contract law standards. U.S. v. Johnson, 861 F.2d 510 (8th Cir.1988). Unlike a regular commercial contract, due process requires that the government adhere to the terms of an immunity agreement. U.S. v. Thompson, 25 F.3d 1558, 1562 (11th Cir. 1994). What a court really looks for is that the prosecution treat persons accused of crimes fairly and equitably and that the prosecution not take abusive advantage of them. State v. Howe, 514 N.W. 2d 356, 363 (C.App. Neb. 1994). Dismissal of an indictment is an appropriate remedy to effectively enforce a cooperation agreement. (U.S. v. Carillo, 709 F.2d 35, 37 (9th Cir.1983)).

In the instant case the Petitioner's due process rights were violated when the State failed to abide by its agreement. The petitioner did what he promised - he delivered a major drug conspiracy. The fact that Petitioner's efforts benefited the federal government was due solely to the State's actions and lack of cooperation. As a result of Petitioner's cooperation, he waived his right against self-incrimination; discussed with law enforcement his pending criminal charge; confessed to committing additional criminal activity; placed his life and the lives of his family in danger; and was forced to flee the State with his family for their

safety. As the dissenting justice stated, the State's refusal to abide by its word was "blatantly violative" of Petitioner's right to due process. The State should be required to honor its obligations under the agreement. For this court to hold otherwise would "constitute judicial approval of the government violating its agreement, a reprehensible aberration." People v. Schmidt, 173 Ill. App. 3d 66, 527 N.E.2d 384, 405 (1988), rev'd on other grounds, 131 Ill. 2d 128, 545 N.E.2d 665 (1989).

II. THE DECISION BELOW HAS IMPORTANT AND DISTURBING CONSEQUENCES FOR BOTH THE ACCUSED AND LAW ENFORCEMENT.

The State's failure to perform pursuant to a cooperation agreement has obvious due process consequences to the accused. In People v. Schmidt, 173 Ill. App. 3d 66, 527 N.E.2d 384, 405 (1988), rev'd on other grounds, 131 Ill. 2d 128, 545 N.E. 2d 665 (1989) the Illinois Appellate Court concluded that a defendant's "reward" for his cooperation was a trip to the penitentiary, possibly with his drug supplier. "This result, it would seem, over taxes common decency and fairness". Id.

In addition, failure to enforce cooperation agreements may adversely affect law enforcement. The agreement is designed, in the context of the illegal drug trade, to enable law enforcement officers to apprehend large-scale drug dealers, "tactic unequivocally desired by law enforcement and readily accepted by the courts in the never-ending struggle to curb and combat the nefarious enterprise of drug trafficking and usage." People v. Smith, 233 Ill. App. 3d 342, 599 N.E.2d 492, 497 (1992), citing People v. Schmidt, 173 Ill. App. 3d 66, 101 527 N.E.2d 384 (1988), rev'd on other grounds, 131 Ill. 2d 128, 545 N.E.2d 665

(1989). A court's failure to enforce such agreements will discourage others from cooperating with law enforcement if they believe the government can unilaterally breach its promises. As a result, the accused has no incentive to assist in the destruction of other drug conspiracies as the Petitioner did herein.

III. THE APPELLATE COURT'S HOLDING CONFLICTS WITH DECISIONS OF OTHER FEDERAL COURTS.

The Appellate Court's holding conflicts with several federal court decisions interpreting the constitutional requirements of cooperation agreements. As discussed above, the Appellate Court failed to recognize that when the defendant has acted to his detriment in reliance upon an agreement, "as a matter of fair conduct, the government ought to be required to honor such an agreement." U.S. v. Carpenter, 611 F.Supp. 768,774-75 (N.D. Ga. 1985)

Furthermore, the Appellate Court erroneously held that the State was free to withdraw from the agreement. However, the Eighth Circuit has stated that the government is not free to unilaterally decide whether there has been a breach of a plea agreement by a defendant and then withdraw the agreement. U.S. v. Johnson, 861 F.2d 510, 513 (8th Cir. 1988) In fact, a defendant can be excused from performance. The government unilaterally modifies the terms as it did in the instant case. U.S. v. Pascal, 496 F. Supp. 313 (N.D. Ill. 1979)

This Court's review is essential to clarify this critical area of constitutional law and to reverse the appellate court's erroneous and unfair decision.

CONCLUSION

For the reasons stated above, Petitioner submits that this case bring before the Court a substantial and important federal question which requires consideration. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted.

JAMES W. REILLEY**
TERRY SULLIVAN
The Sullivan Firm, ltd.
2550 West Golf Road
Suite 101
Rolling Meadows, Illinois 60008
(847) 228-1100

JAMES W. REILLEY
2015 South Arlington Heights Road
Arlington Heights, Illinois 60005
(847) 228-9870

Counsel for Petitioner
**Counsel of Record

APPENDIX A

FIRST DIVISION
AUGUST 18, 1997

No. 1-95-2684

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit
	)	Court of Cook County.
Respondent - Appellee,	)	
	)	
v.	)	No 86 CR 2653
	)	
ALEX BLANKENSHIP,	)	Honorable
	)	John J. Mannion,
Petitioner - Appellant.	)	Judge Presiding.

ORDER

Petitioner Alex Blankenship appeals an order of the circuit court of Cook County denying his Petition for Post-Conviction Relief. The record on appeal indicates the following facts. Defendant was found guilty of possession of a controlled substance with intent to deliver and sentenced to a six-year term of imprisonment following a stipulated bench trial. In an unpublished Rule 23 order, this court reversed, holding that two police officers were material witnesses who should have been called at the suppression hearing. People v. Blankenship, No. 1-89-3466 (1st

Dist., 5th Div., June 14, 1991). However, the Illinois Supreme Court upheld the conviction on appeal. People v. R.D., 155 111. 2d 122, 613 N.B.2d 706 (1993).

On June 7, 1993, Blankenship filed a Petition for Post-Conviction Relief, which was amended on August 6, 1993. In the petition, Blankenship alleged that during the pendency of his appeals, he cooperated with federal authorities investigating major narcotics trafficking, which had put his life and the lives of his family at risk. Blankenship also alleged that prior to stipulating to the facts at his bench trial, he believed he would receive a sentence of probation based on his cooperation and the representations of state and federal authorities.

Blackenship attached an affidavit in which he stated in part that

> "at the time [he] stipulated to the facts in [his] case and waived [his] right to a jury trial (March 30, 1989), [he] was unable to discuss the above cooperation and promises as ordered by the [federal] agents because the investigation was as yet not completed. [He] relied on the representations of the various state and federal personnel that [he] would not do jail time. But for these representations, [he] would not have waived his right to a jury trial. At the time of sentencing (November 30, 1989), the investigation was still in progress."

An April 16, 1992, letter from United States Attorney Fred Foreman by Assistant United States Attorney Helena Greenwald to Ms. Andrea Zopp, who was then Chief of the Narcotics Prosecution Bureau, was also attached to the amended petition. The letter states that Blankenship "provided extremely valuable assistance'' to a Drug Enforcement Agency (DNA) investigation and the successful prosecution of "drug kingpin" Victor Plescia and his associates. Blankenship's affidavit states that Plescia and nine others, including a former Chicago Police Officer, were arrested in May 1990. The Foreman letter states that the federal government helped relocate Blankenship after the indictment was returned. The Foreman letter notes that Blankenship provided other truthful Information regarding other narcotic traffickers that wore under Investigation at the time. Blankenship's affidavit further

states that seven others were convicted of racketeering as a result of his cooperation, some of whom were being investigated regarding the death of the Spilatro brothers.

The trial court held a hearing on the amended petition on the following dates November 15, 1994; November 29, 1994; January 18, 1995; March 1, 1995; and June 22, 1995. Blankenship testified that at the time of his arrest for possession of a controlled substance with intent to deliver in 1986, he spoke with the arresting officers, Detectives D'Antonio, Darcy and Graham. Blankenship stated that Detective D'Antonio had told him that if he gave up his supplier, he would not have to go to jail. According to Blankenship, all three officers also told him that if he did "three little deals or a big one" he would not have to go to jail.

Sergeant Pat Darcy testified that he was a detective at the time of Blankenship's arrest on February 16, 1986, for possession of 1600 grams of cocaine. Sergeant Darcy testified that he probably gave Blankenship his card and informed Blankenship that he could be contacted to discuss an agreement to propose to the State's Attorney. Sergeant Darcy denied making any offer or promise of consideration at the time.

During the summer of 1987, Blankenship'& attorney, Terry Sullivan, introduced Blankenship to Detective John Mueller at the State's Attorney's Office on 26th Street. Blankenship told Detective Mueller about his arrest and the offer made by the arresting detectives. Blankenship wanted to know whether he could "work [his] deal off." Blankenship testified that Detective Mueller said he would return in a few minutes and left the room. According to Blankenship, when Detective Mueller returned, he offered that if Blankenship did "three regular deals or a big one" he would not have to go to jail. Blankenship testified that he did not know exactly what a "little- or "re(jular" deal meant. Sergeant Darcy testified that this meant a deal of at least 1600 grams of any controlled substance.

The parties stipulated that if Kenneth Wadas was called to testify, he would state that he supervised the Narcotics Division of the Cook County State's Attorney's Office from 1983-86. Wadas would also have testified that Detective Mueller was given great leeway in making

agreements with informants when needed for undercover investigations. Wadas was unaware of any Instance where an agreement made by Detective Mueller was not honored.

John Mueller testified that in 1987, he was a Schaumburg police officer assigned to the Narcotics Division of the Cook County State's Attorney's Office at 26th and California. Mueller testified that he was involved in approximately 50 or 60 undercover drug investigations at that time, approximately 95% of which involved informants with pending criminal charges. According to Mueller, the State's Attorney's office had an unwritten policy in 1987 regarding the consideration that would be given to a cooperating Informant. Mueller testified that the policy "was either 3 for 1 or 1 large deal, which is larger than the amount [the informant] would have been caught with."

Mueller also testified that he lacked discretion to make such an offer to anyone he chose. Rather, Mueller was required to get prior approval from a State's Attorney after giving a proffer of the informants information. Mueller never had any difficulty in obtaining such approval from an Assistant State's Attorney (ASA).

Mueller testified that at their first meeting, Blankenship provided the names of narcotics traffickers. Blankenship testified that he mentioned Plescia and others. Mueller testified that he recognized these names, and told Blankenship that he would need to seek approval before going any further. Mueller obtained the approval approximately 15 minutes later. Mueller had told Blankenship that the offer would be "3 deals or one large deal." According to Mueller, Blankenship said that he would start working immediately to set these people up for Mueller.

Mueller testified, however, that there was not any set time limit on Blankenship's cooperation, because of the nature of the work. As to the other terms of the offer, Mueller testified that he would consider a "deal done" when a person had been arrested and charges were brought by the State's Attorney.

Both Mueller and Blankenship testified that they met a few days later at a Chicago restaurant. Blankenship told Mueller that he was still working for "Vic" because he owed Plescia money. According to

Blankenship, Plescia had put up $6000 in bond money, so that Blankenship spent only 20 days in jail following his arrest. Mueller testified that Blankenship also named a Chicago Police officer who Blankenship believed to be involved in one of the organizations. Mueller testified that he met Blankenship approximately 5 or 6 more times and that Blankenship "beeped" him for telephone conversations every day. According to Mueller, Blankenship said he was transporting packages for Plescia that Blankenship believed to contain cocaine. Most of these deliveries were to a man named Ken Allen.

However, Mueller also testified that Blankenship never arranged a purchase from any of the individuals they had discussed. Approximately 3 to 4 weeks after they started to work together, Mueller was told by two men, one of whom was the "head of all the narcotics investigators," that the Chicago Police Department was taking Blankenship back as a confidential informant. Ronald Arnold, an attorney who worked with defense attorney Sullivan in 1987 and who knew Mueller, testified that Mueller had said he was removed from the case due to "jealousies."

Blankenship then met with Detective Darcy on November 24, 1987. Detective Darcy asked whether Blankenship thought he could still got Plescia. Blankenship said that he had been talking to and making deliveries for "Vic," and thought he could get Plescia. According to Blankenship, Detective Darcy stated that they had the same deal he mentioned previously.

Blankenship also testified that at the first meeting with Detective Darcy, he signed a "Cooperating Individual Agreement" (Agreement). The Agreement was ultimately admitted into evidence, but the parties have not identified where it appears in the record on appeal. Blankenship testified that before signing the Agreement, he had read a part of it that states as follows:

> "I understand that no organized crime division police officer may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that are pending against me."

Blankenship stated that he asked Detective Darcy why he had to sign the Agreement if they were already working on a deal. According to

Blankenship, Detective Darcy replied that it was merely a formality.

Sergeant Darcy testified that Blankenship signed an "Advisement of Rights and Waiver" (Advisement), which stated In part that Blankenship was waiving his fifth amendment privilege against self-incrimination. Blankenship admitted that he read and signed the Advisement. Like the Agreement, the Advisement was admitted into evidence, but the parties have not identified where it appears in the record on appeal.

According to Blankenship, Detective Darcy told him that he "had to get somebody in there to buy some drugs from Vick [sic]." Blankenship had difficulties in arranging a transaction with Plescia, who was suspicious about the fact that Blankenship's court case kept getting continued. Blankenship testified that Plescia would search him every time he picked up a package.

Blankenship eventually got Plescia to agree to sell a kilogram of cocaine to one of Blankenship's "friends." According to Blankenship, however, Detective Darcy said he could only got $6500, which would only buy a quarter of a kilogram of cocaine.

As Blankenship tried to arrange a smaller deal with Plescia, he arranged a transaction between Detective Darcy and Ken Allen. In April 1988, while making a delivery to Allen, Blankenship noticed two bags of cocaine sitting on a table; he also saw people enter Allen's abode to buy drugs. Blankenship left Allen, then "beeped" Detective Darcy. Blankenship met Detective Darcy at the police station, signed an affidavit for a search warrant and accompanied Detective Darcy to court to appear before a judge and secure the search warrant. The police executed the warrant and arrested Allen. Sergeant Darcy testified, however, that only two ounces of cocaine were seized, along with marijuana, amphetamines, two shotguns, a scale and $3500 in cash.

Blankenship testified that Plescia's attitude toward him soured further after Allen's arrest. Plescia would ask Blankenship whether he had been involved in the arrest or knew who was responsible every time they met. Blankenship feared for the safety of his family. On one occasion, Plescia commented that "he knew where Blankenship's family

was." The next day, Pat Staggerwald, who collected money for Plescia, stopped by Blankenship's house. Shortly thereafter, on one of Blankenship's court dates, Staggerwald appeared in the courtroom to tell defense attorney Sullivan that Blankenship's bond money should go to Plescia's mother.

The parties stipulated that if called as witnesses, ASAs Al Vroustouris and Dave King would have testified that in July 1988, they were respectively the supervisor and deputy supervisor of the narcotics unit. ASAs Vroustouris and King reviewed the case against Blankenship in July 1988 and personally met defense attorney Sullivan to notify him that there would be no further agreement due to a lack of cooperation from Blankenship. Attorney Sullivan asked for additional time for cooperation at that meeting.

It was stipulated that on January 30, 1989, ASA Vroustouris and King attended a meeting with attorney Sullivan and ASA Tom Dwyer, who was then Chief of the Bureau of Special prosecutions. ASA Dwyer agreed to extend an agreement for "three prosecutions of equal or greater nature" for 30 days. It was stipulated that attorney Sullivan did not complain about the conduct of the State's Attorney's office or the Chicago Police Department at either of aforementioned meetings.

Blankenship got Plescia to agree to sell less than a kilogram of cocaine, approximately in January 1989. However, Detective Darcy was unwilling to "let go" of the money. Sergeant Darcy testified that the transaction was not approved because it would have required Blankenship or another non-police party to make the buy and that it was not acceptable to "let go" of $6500 if no arrest was made. According to Blankenship, Detective Darcy said "you've already done one deal, do two more, and then you'll have your case done." Sergeant Darcy testified that he did not recall saying this to Blankenship.

Approximately one month later (apparently in early February 1989), Blankenship arranged a transaction for Detective Darcy with a man named Dennis Sullivan. Blankenship was working with another informant named Michael Metta. Blankenship and Metta had both

sampled cocaine from a bag of approximately one pound of cocaine in a ziploc bag in Sullivan's freezer. After leaving Sullivan's apartment, Blankenship again helped Detective Darcy obtain a search warrant.

However, according to Blankenship, Detective Darcy told him a few days later that the police had waited on executing the warrant and that no drugs were found when the warrant was executed. Blankenship stated that Detective Darcy told him that he did not want to work with Blankenship any longer. Sergeant Darcy testified that on February 17, 1989, he was told by ASA Mary Margaret Bresnahan, with whom Sergeant Darcy regularly spoke about Blankenship's cooperation beginning in July 1988, that the agreement with Blankenship had been terminated.

It was stipulated that ASA King would testify that on February 24, 1989, he advised ASA Mary Margaret Brosnahan that the extension of the agreement had expired. ASA Dwyer would testify that attorney Sullivan had contacted him about obtaining a further extension of the agreement, but he told Sullivan that the case was going to trial.

ASA Broonahan testified regarding the termination of the agreement with Blankenship and the progress of his case. ASA Brosnahan testified that Blankenship's trial finally commenced on March 30, 1989, but was not completed with stipulations to prior motion testimony and exhibits until August 11, 1989. The trial court found Blankenship guilty, but denied the State's motion to revoke bond. Attorney Sullivan testified that ASA Brosnahan did not expressly tell him that the deal was terminated. Sullivan also testified that he believed that ASA Brosnahan never knew there was any deal, because she was the third or fourth person assigned to the prosecution of the case.

The parties stipulated that in March 1989, Blankenship agreed to cooperate with the FBI and the DEA in an undercover investigation of Plescia. Blankenship admitted signing an "agreement concerning cooperation" with the FBI dated March 20, 1989. The document was admitted into evidence, but the parties have failed to show where it appears in the record on appeal. Defense attorney Arnold testified that he was present at the March 1989 meeting between Blankenship and the federal agents, had read the cooperation agreement, and advised

Blankenship to sign it. Arnold admitted reading a portion of the document which stated that Blankenship understood and agreed that

> "no promises have been made by the Cook County State's Attorney's office or by any state law enforcement officials regarding the state prosecution against [him]."

Arnold testified that he did not believe this contradicted the assertion of a prior deal with Mueller, because in his opinion, there was no new consideration for the new agreement with the federal agents.

Blankenship testified that in late April 1989, he signed a "statement of understanding" with the DEA. Blankenship admitted that this document was signed after his trial on state charges had commenced.

The parties stipulated that ASA King would testify that in May 1989, he received a call from Assistant United States Attorney Joe Duffy asking whether there was any agreement between the State and Blankenship. ASA King informed Assistant United States Attorney Joe Duffy that there was no longer an agreement between the State and Blankenship and that the case was proceeding to trial.

The parties also stipulated that if called as a witness, Assistant United States Attorney Helene Greenwald would have given testimony substantially similar to the facts provided in the Foreman letter that was attached to Blankenship's amended petition. In particular, Assistant United States Attorney Helene Greenwald would have testified that law enforcement officers had previously been unable to penetrate Plescia's organization, but that as a result of Blankenship's cooperation, eight people pleaded guilty or were convicted of conspiracy; another died before trial. The eight remaining defendants were sentenced as follows: Victor Plescia, 35 years of imprisonment; Norma Demma, 188 months of imprisonment; Kevin Geiger, 78 months of imprisonment; Anthony Grossi, 156 months of imprisonment; Frank Bonavolente, 188 months of imprisonment; Camillo Grassi, 240 months of imprisonment; Cora Plescia, 3 years of probation, 6 months of home imprisonment; and Nickolas Rizzato, 76 months of imprisonment.

William Maloney, a special agent with the DEA, testified that the information he received from Blankenship was the same information that

Blankenship had provided to the State's Attorney, the Chicago Police Department and the FBI. Special Agent Maloney stated that in April 1989, federal agents bought half a kilogram of cocaine from Rizzato, a Chicago Police Officer who worked for Plescia. Special Agent Maloney also testified that in June 1989, Blankenship and federal agents met with Plescia. Special Agent Maloney testified that Blankenship was instructed not to discuss his cooperation with anyone, out of fear for his life and the lives of his family. Blankenship testified that his family remained in hiding at the time of his testimony for the amended petition.

ASA Brosnahan testified that Blankenship's case was set for sentencing on October 27, 1989. ASA Brosnahan observed attorney Sullivan with two men in civilian clothes standing in front of the courtroom. The three men spoke with the trial judge in a long hallway leading to the back of the courtroom; one of the men handed the judge a letter. While heading for his chambers, the judge handed ASA Brosnahan the letter, signed by two DEA agents, which advised the trial judge of Blankenship's cooperation with the DEA and requested a 30 day delay in sentencing. Blankenship's case was called and received a final date for sentencing. The trial judge allowed ASA Brosnahan to make a copy of the letter.

It was stipulated that ASA Dwyer would testify that he met with DEA officials in November 1989 to voice his disapproval of the DEA's failure to notify the State's Attorney's office regarding Blankenship's cooperation with the federal government during his state trial and sentencing proceedings.

At the final sentencing hearing, ASA Brosnahan asked for a "substantial period" of imprisonment and a fine of over $30,000. ASA Brosnahan noted that while the trial court was not required to follow new sentencing guidelines in this case, those guidelines would have mandated a 15 year minimum sentence. The trial court imposed the old minimum sentence of six years in prison, together with a "street value" fine. The trial court again denied the State's motion to revoke bond.

Following closing arguments, the trial court denied Blankenship's post-conviction petition. The transcript of proceedings shows that the trial court concluded that Blankenship tried to "cut a deal"

with the State that "absolutely fizzled." The trial court concluded that at the time of Blankenship's trial, there was no agreement "because he didn't do his end of the bargain with the State." The trial court also noted that petitioner had done commendable work and suggested that he seek executive clemency. Indeed, the trial court denied the State's motion to revoke bond while petitioner pursued "all of his avenues." Petitioner filed a timely notice of appeal.

I

On appeal, petitioner Blankenship argues that the trial court erred in denying his amended Petition for Post-Conviction Relief. The Post-Conviction Hearing Act provides a remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred In their trial. People v. Eddmonds, 143 111. 2d 501, 510, 578 N.E.2d 952, 955 (1991). A post-conviction proceeding is not an appeal per se, but a collateral attack upon a final judgment. People v. Albanese, 125 Ill. 2d 100, 104, 531 N.E.2d 17, 18 (1988). A post-conviction proceeding is not designed to determine guilt or innocence, but to inquire into constitutional issues which have not been, and could not have been, previously adjudicated. Eddmonds, 143 111. 2d at 510, 578 N.B.2d at 956. The petitioner in a post-conviction proceeding bears the burden of proving that a substantial constitutional violation occurred at trial. Eddmonds, 143 Ill. 2d at 510, 578 N.E.2d at 956.

Blankenship contends in his petition that he was denied due process of law as a result of the State's failure to comply with its agreement with him. The State initially responds that Blankenship has waived this issue by failing to raise it in the trial court or on direct appeal to this court. Although the State's argument is not without merit, this court may consider the issue in light of the substantial question of constitutionality involved. People v. Saunders, 135 111. App. 3d 594, 601, 482 N.E.2d 85, 91 (1985); People v. McNeal, 120 111. App. 3d 625, 627-29, 458 N.E.2d 630, 631 (1983). Accordingly, we turn to address the merits of petitioner's argument.

II

The threshold question on appeal is whether an enforceable agreement existed between the parties. It must be noted that the parties disagree over the nature of the alleged agreement itself. The petitioner suggests in his brief that he had a "cooperation-immunity agreement" with the State. In contrast, the State's brief suggests that petitioner seeks to enforce a plea agreement. While ultimately a question of due process, both types of agreements are governed to some degree by contract law principles. See People v. Evans, Nos. 80158, 80159, slip op. at 5 (Ill. Sept. 19, 1996); see U.S. v. Johnson, 861 F.2d 510, 512 (8th Cir. 1988). However, a "cooperation-immunity" agreement differs from a plea agreement in that the consideration for a plea agreement is the defendants waiver of the right to a trial, whereas with a "cooperation-immunity" agreement, the cooperation is sufficient consideration for the State's promise of immunity. People v. Smith, 233 111. App. 3d 342, 349, 599 N.E.2d 492, 497 (1992).

Petitioner's brief argues that the trial court should have enforced a 1987 agreement between himself and Detective John Mueller on behalf of the State. Petitioner claims he met his obligations under that agreement by arranging the transaction that resulted in the arrest and conviction of Plescia and his associates. However, Mueller stopped working with petitioner after three or four weeks. The record clearly shows that petitioner did not and could not have arranged the Plescia transaction within this time period. The State, as represented by Mueller, was free to withdraw from the alleged agreement prior to petitioner's performance or surrender of a constitutional right, as petitioner is not otherwise entitled to specific enforcement of an executory agreement. Cf. People v. Navarroli, 121 111. 2d 516, 521 N.E.2d 891 (1988)(plea agreement); People v. Boyt, 109 Ill. 2d 403, 488 N.B.2d 264 (1986) (same).

Of course, petitioner may believe that his relationship with the State continued with the Chicago Police Department. In this regard, it must be noted that the record shows petitioner signed a written "Cooperating Individual Agreement" with the Chicago Police Department, as well as an "Advisement of Rights and Waiver." Contract law principles dictate that a complete, valid, written contract supersedes

all prior and contemporaneous negotiations and agreements dealing with the same subject matter. E.g., Harris Trust and Savings Bank v. Chicago Title and Trust Co., 84 Ill. App. 3d 280, 283, 405 N.B.2d 411, 414 (1980). The Agreement and the Advisement do not appear in the record on appeal in their entirety. It is the responsibility of the appellant to provide a complete record for review; any doubts arising from an incomplete record on appeal must be resolved against him. People v. Adams, 128 Ill. App. 3d 725, 729, 471 N.E.2d 575, 578 (1984); People v. Heflay, 109 111. App. 3d 74, 76, 440 N.B.2d 173, 176 (1982). Where documentary evidence is not included in the record on appeal, this court will presume that the documents supported the ruling of the trial court. See, e.g., Bates & Rogers Construction Corp. v. Greeley & Hansen, 109 Ill. 2d 225, 486 N.E.2d 902 (1985); LaSalle National Bank & Trust v. City of Chicago,128 Ill. App. 3d 656, 470 N.E.2d 1239 (1984). Moreover, the existence of a cooperation agreement and its terms and conditions are questions of fact; thus, the trial court's determination will not be reversed unless contrary to the manifest weight of the evidence. See People v. Navarroli, 121 Ill. 2d 516, 521-22, 521 N.E.2d 891, 893 (1988).

In passing, we also note that petitioner signed an agreement with federal authorities stating that no promises were made by the Cook County State's Attorney's office or by any state law enforcement officials regarding the state prosecution against him. Petitioner attaches no weight to this statement. Nevertheless, the trial court may well have construed it as an admission that there was no agreement between petitioner and the State, particularly if such a conclusion was supported by evidence reviewed by the trial court but not included in the record on appeal. We also note that petitioner was represented by counsel throughout the time period at issue.

Petitioner argues that he waived his fifth amendment privilege against self-incrimination as consideration. It is not clear that this case falls outside the scope of Navarroli, which rejected a fifth amendment argument regarding activities outside the underlying prosecution. However, assuming arguendo that petitioner's post-arrest statements about later dealings with Plescia can constitute consideration, petitioner is not automatically entitled to specific performance. Petitioner has failed to

show that the State used any statement he made In the course of his efforts to cooperate (or the fruits thereof) against him in any criminal prosecution. Specific performance is not mandated where the government's breach results in no prejudice to the accused. Johnson, 861 F.2d at 512-13.

Petitioner, citing People v. Pierson, 230 Ill. App. 3d 186, 595 N.B.2d 674 (1992), argues that the fact that the State has not prosecuted him based on his later statements is irrelevant. However, Pierson involved a defendant's statements about the offense charged in that case. Pierson in thus distinguishable from this case, where petitioner argues that statements relating to other possible offenses constitute consideration. Moreover, In Pierson, the trial court dismissed the charge, putting the standard of review in defendant's favor. Such is not the case here.

Petitioner also claims that he should be excused from performing because the State failed to provide necessary funds for the transaction. However, petitioner has failed to show that the State agreed to fund his endeavors.

In sum, based on the record in this appeal and the omissions from that record, it would appear that petitioner has failed to show that the trial court's decision was contrary to the manifest weight of the evidence or an abuse of discretion in this case.

For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

CAMPBELL, P.J., with O'BRIEN, concurring.

BUCKLEY, J., dissenting.

BUCKLEY, J., dissenting:

There is no dispute that a cooperation agreement existed that required defendant to arrange either three small drug deals or one deal involving a large-scale drug trafficker. In return, defendant was to receive a sentence of probation with no jail time for his crime. The record is replete with evidence of defendant's cooperation, despite the grave risks it posed to himself and his family. Defendant was ready, willing, and able to arrange a major drug deal between Plescia and an undercover State or Chicago Police Department agent, but neither the State nor the Department procured the funds necessary to complete the transaction.

Nonetheless, defendant still honored his promise under the agreement by helping law enforcement infiltrate Plescia's operation. Defendant's actions were critical to the federal convictions of Plescia and seven of his associates for their involvement in a "sizeable Chicago-based cocaine conspiracy spanning several years." United States v. Plescia, 48 F-3d 1452, 1456 (7th Cir. 1995).

Defendant did his part despite the tremendous danger and despite the State's and Department's unwillingness to help him as they had promised. It makes no difference that the ultimate objective was obtained by the federal government after the State failed to hold up its end of the bargain. As he was required to do under the cooperation agreement, defendant made up for his crime by bringing down a major drug conspiracy. The State rewarded him by reneging on its promise and pushing for jail time. I can think of no reason for the State's decision to seek a prison sentence except resentment that the federal government received credit for the Plescia convictions instead of the State.

The cooperation agreement was, as they all are, "a tactic unequivocally desired by law enforcement and readily accepted by the courts in the never-ending struggle to curb and combat the nefarious enterprise of drug trafficking and usage." People v. Smith, 233 Ill. App. 3d 342, 350 (1992), citing People v. Schmitt, 173 Ill. App. 3d 66, 101 (1988) rev'd on other grounds, 131 Ill. 2d 128 (1989). The purpose of the agreement was to obtain the convictions of large-scale drug traffickers. That purpose was achieved.

Furthermore, defendant was prevented from raising the cooperation agreement issue at trial or sentencing. At the time, the federal investigation was still pending, and the DEA had instructed defendant to remain silent as to his role in it. Therefore, defendant's continued efforts to help in the infiltration of the Plescia conspiracy, even after the State breached its promise, resulted in his being effectively denied his best defense -- the cooperation agreement.

It is a violation of a defendant's right to due process of law for the State to renege on its promises under a cooperation agreement after the defendant has performed. Smith, 233 Ill. App. 3d at 350-51. Here, as in Smith, "the State received the full benefit of its bargain." Smith, 233 Ill. App. 3d at 351. Defendant helped put a major drug dealer and seven of his cohorts behind bars. Therefore, the State should be required to honor its obligations under the agreement.

I find the state's actions in this case not only manipulative and petty, but also blatantly violative of defendant's right to due process under the cooperation agreement and contrary to public policy. For these reasons I would reverse the trial court's denial of defendant's petition for post-conviction relief.

APPENDIX B

LLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

April 1, 1998

Ms. Nancy J. Nicol
The Sullivan Law Firm, Ltd.
2550 West Golf Road
Suite 101
Rolling Meadows, IL 60008

No. 84691 - People State of Illinois, respondent, v. Alex Blankenship, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 23, 1998.